IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5569 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ABDUL HAMID @ MUNNO MOHMADBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5569 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 29/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner dated 22.3.2002

in exercise of powers vested in him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as dangerous person within the meaning of sec.2(c) of the PASA Act and while recording the subjective satisfaction, the detaining authority has considered the registration of the criminal offence registered with Mahidharpura Police Station, Surat vide CR No. 5/2002 for the offence punishable under sec. 393, 385, 504, 506(2) of IPC and under sec. 135 of the Bombay Police Act. IN the grounds of detention served to the detenu, the offence shown are little-bit different. He shown to be an accused of the offence punishable under sec. 394 of IPC instead of sec. 393 of IPC. The offence punishable under sec. 385 mentioned in the charge-sheet has not been mentioned in the grounds for detention. On the day of incident, at about 9.45p.m. the detenu had entered in the shop owned by the complainant in the Choksi Bazar area run in the name and style of J.K. Jwellors and had attempted to robe the property and when the attempt was resisted the detenu had given a knife blow on the body of the complainant. The detaining authority has considered the statements of two unnamed witnesses who have narrated the activities of the petitioner. For the purpose of recording the subjective satisfaction required to be recorded as per the scheme of sec. 3 of the PASA Act, the detaining authority has mainly placed reliance on these three aspects i.e. the offence and statements of two unnamed witnesses.

The order of detention has been challenged on the number of grounds, however, the ld. counsel has concentrated her arguments mainly on two grounds. That the petitioner has been detained for the sole incident allegedly occurred on 3.1.2002 registered with Mahidharpura Police Station and on account of this sole incident, the detaining authority could not have said that these activities is a challenge to a public order or such a stray incident would disturb the even tempo of public life. . While developing this argument, ld. counsel submitted that the petitioner himself is running a shop and doing polish on the jewellary and this fact is reflected in the statement of witness no. 1 available on record. The statement of witness, as it is submitted by the ld. counsel, it has been recorded only with a view to detain the petitioner by the sponsoring authority. So, it is submitted that there was no reason for the detaining authority to record the subjective satisfaction that the activities of the petitioner is dangerous or a

challenge to even the tempo of public life. This subjective satisfaction has to be recorded objectively and in absence of recording of such subjective satisfaction, there is no scope to exercise the powers vested with the detaining authority under sec. 3 of the PASA Act.

The second submission is that though the statements of two unnamed witnesses are recorded on 13.1.2002 and 16.1.2002, these statements were verified after a lapse of two months i.e. on 20.3.2002 and this delay has affected the requirement of proximity. The unexplained delay caused in getting the statements verified and passing the order. Even from the date of the recording of the statement has not been explained. So, the continued detention and the order of passing the order of detention both vitiates. This is a violative of rights enshrined under Article 22(5) of the Constitution of India.

On both these counts, the order of detention and the continued detention requires to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 22.3.2002 passed by Police Commissioner, Surat City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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